Nos. 78-1545, 78-1549, 80-951 (Consolidated)

Office-Supreme Court, U.S.
FILED
MAY 13 1981
ALEXANDER L. STEVAS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ANNE B. ZIPES, et al.,

Petitioners

vs. No. 78-1545

TRANS WORLD AIRLINES, INC.,

Respondent,

TRANS WORLD AIRLINES, INC.,

Cross-Petitioner,

vs. No. 78-1549

ANNE B. ZIPES, et al.,

Cross-Respondents,

INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS,

Petitioner,

vs. No. 80-951

TRANS WORLD AIRLINES, INC. and ANNE B. ZIPES, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL RESPONSE OF THE PLAINTIFF CLASS REGARDING THE PENDING MOTION OF TWA AND THE PLAINTIFF CLASS

PRESSMAN & HARTUNIAN
55 East Monroe Street
Chicago, Illinois 60603

ARAM A. HARTUNIAN
One of the attorneys for
Subclass B

KEVIN A. FORDE, LTD.
111 West Washington Street
Chicago, Illinois 60602

KEVIN A. FORDE
One of the attorneys for
Subclass A

PETITION FOR CERTIORARI IN NO. 78-1545 FILED APRIL 10, 1979, IN NO. 78-1549 ON APRIL 11, 1979, AND IN NO. 80-951 ON DECEMBER 12, 1980. ALL PETITIONS WERE GRANTED MARCH 9, 1981

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ANNE B. ZIPES, et al.,

Petitioners

vs. No. 78-1545

TRANS WORLD AIRLINES, INC.,

Respondent,

TRANS WORLD AIRLINES, INC.,

Cross-Petitioner,

vs. No. 78-1549

ANNE B. ZIPES, et al.,

Cross-Respondents,

INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS,

Petitioner,

vs. No. 80-951

TRANS WORLD AIRLINES, INC. and ANNE B. ZIPES, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL RESPONSE OF THE PLAINTIFF CLASS REGARDING THE PENDING MOTION OF TWA AND THE PLAINTIFF CLASS

TWA's motion seeks to limit review in No. 80-951 to the issues regarding the district court's grant of retroactive competitive seniority. TWA's position (with which the plaintiff class disagrees) is that only if TWA's motion is granted will the

district court's separately entered settlement approval order become final and thereby enable TWA and the plaintiff class to implement forthwith the settlement agreement, including dismissal by stipulation of the writs of certiorari in Nos. 78-1545 and 78-1549.

In its opposition to TWA's Motion to Limit Review, the Union recites three provisions in the settlement agreement on which it challenges the settlement approval order:

> (a) The provision stating that the settlement agreement supersedes contrary provisions in flight attendant labor agreements;
>
> (b) The provision stating that the district court has continuing jurisdiction to enforce the settlement agreement; and
>
> (c) The provision stating that the settling parties' contemplated that the district court would conduct a separate hearing into the seniority question.

(Response of Independent Federation of Flight Attendants to Motion of TWA) These three provisions are, however, meaningless to the plaintiff class, to TWA and to the Union. Each provision recites a matter that by operation of law would exist even in the absence of the provision.

Provision (a) merely states what is true as a matter of law. The benefits obtained by the class members become TWA's irrevocable obligation. Being thus bound, TWA could not thereafter reduce its obligations to the class members simply because of contrary provisions in a labor agreement. *Franks* v. *Bowman Transportation Co.*, 424 U.S. 747, 779 (1976). Provision (b) also recites the obvious. The District Court would retain jurisdiction over the settlement agreement even in the absence of any such statement by the settling parties. Provision (c) neither imposes obligations upon nor obtains rights for any of the parties. Title VII either did or did not confer upon the district court the power to grant competitive seniority. This is a question of law rather than a matter that could be determined by the settling parties.

Thus, the three provisions of the settlement agreement have no impact upon the Union. It follows that the order approving the settlement agreement would have had the same effect upon the Union even in the absence of those three provisions. Excluding the settlement approval order from review in No. 80-951 will leave the Union in exactly the same position it now occupies. It will not restrict the Union's arguments on any issue nor will it restrict the Union's obtaining any of the relief to which it would otherwise be entitled in this Court.

Accordingly, TWA's motion should be granted. In the alternative, if TWA's motion is denied, one of the alternative motions of the plaintiff class should be granted.

Respectfully submitted,

ARAM A. HARTUNIAN
PRESSMAN & HARTUNIAN
55 East Monroe Street
Chicago, Illinois 60603
(312) 372-6475
Attorney for Plaintiff Class